

UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
EUGENE DIVISION

ALISA WALKER, individually,

Plaintiff,

v.

SHANGRI-LA CORPORATION, a  
domestic non-profit corporation,

Defendant.

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Case No. 6:20-cv-01577-MK  
**OPINION AND  
ORDER**

**KASUBHAI**, United States Magistrate Judge:

In this employment discrimination action, Plaintiff Alisa Walker (“Plaintiff”) asserts six claims against Defendant Shangri-La Corporation (“Defendant”): claims for interference, restraint, or denial of rights under the Family and Medical Leave Act (“FMLA”), 29 U.S.C. § 2601 *et seq.*, and the Oregon Family Leave Act, ORS § 659A.150 *et seq.*; disability discrimination claims for failure to accommodate and engage in interactive process under the Americans with Disabilities Act (“ADA”), 42 U.S.C. § 12111 *et seq.*, and Oregon state law, ORS

§ 659A.103 *et seq.*, OAR 839-006-0206; and claims for disability discrimination under the ADA, 42 U.S.C. § 12111 *et seq.*, and Oregon state law, ORS § 659A.103 *et seq.*.

On January 13, 2022, the Court agreed to conduct an *in camera* review of two e-mail documents identified in Defendant's privilege log to determine whether those documents are subject to the attorney-client privilege. *See Minutes*, ECF No. 30. For the reasons that follow, the Court finds that any discoverable content in these documents is protected from disclosure under the attorney-client privilege.

## DISCUSSION

“The attorney-client privilege protects confidential communications between attorneys and clients, which are made for the purpose of giving legal advice.” *United States v. Sanmina Corp.*, 968 F.3d 1107, 1116 (9th Cir. 2020). The attorney-client privilege exists to encourage “full and frank communication between attorneys and their clients and thereby promote broader public interests in the observation of law and administration of justice.” *Upjohn Co. v. United States*, 449 U.S. 383, 389 (1981). Generally, “[i]f a person hires a lawyer for advice, there is a rebuttable presumption that the lawyer is hired as such to give legal advice, whether the subject of the advice is criminal or civil, business, tort, domestic relations, or anything else.” *United States v. Chen*, 99 F.3d 1495, 1501 (9th Cir. 1996) (internal quotations omitted). However, a party may rebut this presumption “when the facts show that the lawyer was ‘employed without reference to his knowledge and discretion in the law.’” *Id.* (internal citation omitted).

The Ninth Circuit established an eight-part test to determine whether information is covered by the attorney-client privilege:

- (1) Where legal advice of any kind is sought
- (2) from a professional legal adviser in his capacity as such,
- (3) the communications relating to that purpose,
- (4) made in confidence
- (5) by the client,
- (6) are at his instance permanently protected
- (7)

from disclosure by himself or by the legal adviser, (8) unless the protection be waived.

*Sanmina*, 968 F.3d at 1116 (citing *United States v. Graf*, 610 F.3d 1148, 1156 (9th Cir. 2010)).

When examining dual-purpose communications, “courts look at whether the primary purpose of the communication is to give or receive legal advice, as opposed to business or tax advice.” *In re Grand Jury*, 13 F.4th 710, 714 (9th Cir. 2021); *see also Meta Platforms, Inc. v. BrandTotal Ltd.*, 2022 WL 93932, at \*1 (N.D. Cal. Jan. 10, 2022) (noting that the Ninth Circuit declined to resolve whether its primary-purpose test requires legal advice to “be ‘*the* primary purpose’ or merely ‘*a* primary purpose’” (citing *In re Grand Jury*, 13 F.4th at 716–17) (emphasis in original)).

The Court has conducted an *in camera* review of the two e-mail documents identified in Defendant’s privilege log. To the extent that the contents of those e-mail documents are discoverable, the Court’s *in camera* review reveals that the primary purpose of the communication was to receive legal advice from an attorney employed with reference to that attorney’s knowledge and discretion in the law. *See Chen*, 99 F.3d at 1501; *see also In re Grand Jury*, 13 F.4th at 714. Defendant made this communication in confidence without waiving the attorney-client privilege. *See Sanmina*, 968 F.3d at 1116. As such, any discoverable content in the two e-mail documents is protected from disclosure under the attorney-client privilege.

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## CONCLUSION

For the reasons above, the Court finds that Defendant has properly invoked the attorney-client privilege. The two e-mail documents identified in Defendant's privilege log and marked as Bates Nos. SLC004417-SLC004418 and SLC4417-SLC004418 are therefore protected from disclosure under the attorney-client privilege.

DATED this 28th day of January 2022.

s/ Mustafa T. Kasubhai  
MUSTAFA T. KASUBHAI (He / Him)  
United States Magistrate Judge